



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: N. W. Ayer, Inc.

File: B-225632

Date: January 16, 1987

DIGEST

Protest that offeror was improperly suspended is dismissed where protester also seeks relief from a court of competent jurisdiction and, despite protester's assertion that it might consider asking the court to request a General Accounting Office decision, the court has expressed no interest in such a decision.

DECISION

N. W. Ayer, Inc. protests the award of a contract for advertising services to any other offeror under request for proposal No. MDA903-86-R-1001 issued by the Defense Supply Service - Washington.

Ayer complains that "it would have been eligible for the award of the contract . . . but for an illegal, indefinite suspension. . . ." According to Ayer, it submitted a proposal and followed that, at the agency's request, with an oral presentation. Ayer further states, however, that the agency is no longer considering its proposal and refused to solicit a best and final offer from it because the Army suspended Ayer on November 23, 1986 and affirmed the suspension on January 9, 1987. Ayer's primary complaint is that the suspension has deprived it of due process because the notice of suspension was impermissibly vague.


~~Under~~ the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (Supp. III 1985), this Office considers protests alleging a violation of a procurement statute or regulation in connection with the issuance of a solicitation by a federal agency or with an award or proposal award of a contract under such a solicitation. 31 U.S.C. § 3551-52. When a protester alleges that it has been improperly suspended or debarred during the pendency of a procurement in which it was competing, we review the matter to ensure that the agency has

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not acted arbitrarily to avoid making an award to the offeror otherwise entitled to award. See, e.g., Spectrum Enterprises, B-221202, Dec. 31, 1985, 86-1 CPD ¶ 5, where we reviewed a suspension report prepared by the Defense Criminal Investigative Service and concluded that the agency did not act arbitrarily in suspending the low bidder. In considering such protests, we also examine whether minimum standards of due process have been met. See S.A.F.E. Export Corp., B-222308 et al., Apr. 28, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 413, aff'd on reconsideration, B-222308.2 et al., July 8, 1986, 86-2 CPD ¶ 44.

We will not consider this protest, however, because the protester is also seeking relief from the United States District Court for the District of Columbia. It has long been our policy to dismiss a protest where the matter is the subject of litigation before a court of competent jurisdiction, unless the court requests our decision. See 4 C.F.R. § 21.9(a) (1986). Our review of the complaint filed by Ayer with the court indicates that Ayer is asking for relief on the same basis it seeks relief from us--that it has been deprived of due process. The court has already denied a request for a temporary restraining order and has before it a motion for a preliminary injunction. There is no request in Ayer's complaint that the court ask for our decision or that the court enjoin contract award pending issuance of our decision, and there is no indication in any document submitted to us that the court is interested in our decision. Although Ayer states that it and Army counsel are seeking to reach agreement on "the next procedural steps to be taken" and that "[a]s part of these next steps, Ayer may consider it appropriate to ask" that the court seek our decision, we think that possibility is too tenuous a basis at this point for us to retain this protest and require the agency to prepare the report that would be required by 31 U.S.C. § 3553(b)(2).

Accordingly, pursuant to 4 C.F.R. § 21.9, we dismiss the protest. Should the court decide to request our decision, we will consider the matter at that time.


Ronald Berger
Deputy Associate
General Counsel